

PT 98-63

Tax Type: PROPERTY TAX

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**TRUSTEES OF SCHOOLS
OF TOWNSHIP 42,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

No. 93-16-1247

**Real Estate Tax Exemption for
1993 Assessment Year**

P.I.N: 03-02-316-030

Cook County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Number 03-02-316-030 should be exempt from 1993 real estate taxes under 35 ILCS 205/19.18,¹ wherein "all property of public school districts or public community college districts not leased by such school or community college districts or otherwise used with a view to a profit" is specifically exempted from real estate taxation.

The controversy arises as follows:

1. In *People ex rel. Bracher v. Salvation Army*, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939 (35 ILCS 205/1 *et seq.*).

The Trustees of Schools of Township 42 (hereinafter the "applicant") filed a Real Estate Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on March 25, 1994. Dept. Group Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that part of the subject property be exempt. Dept. Group Ex. No. 1, Doc. B.

The Department rejected this recommendation via a determination dated April 4, 1996. Said determination found that applicant failed to provide sufficient documentation to support its exemption complaint. Dept. Group Ex. No. 2.

Applicant filed a timely request for hearing as to this denial on April 22, 1996 (Dept. Ex. No. 3) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the subject property be exempt from 1993 real estate taxes.

FINDINGS OF FACT:

A. Jurisdictional Considerations and Other Introductory Matters

1. The Department's jurisdiction over this matter and its position therein, namely that applicant failed to submit sufficient documentation to support its exemption complaint, is established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.
2. Applicant is the governing body of a public elementary (K-8) school district located within Wheeling Township. The school district's purpose is to provide educational opportunities for students who reside within the boundaries of the school district. Tr. pp. 16-17.

3. The North Suburban Library System (hereinafter the "System") is an umbrella organization for a consortium of libraries. Both the System and its constituent libraries are organized pursuant to the Illinois Library System Act, 75 **ILCS** 10/1 *et seq.* Tr. pp. 68, 71; Administrative Notice.
4. The Forest Institute of Professional Psychology (hereinafter the "Institute") is an accredited post secondary educational institution that offers graduate (masters and doctoral-level) curricula in the field of psychology. Applicant Ex. No. 20; Tr. pp. 95, 107.

B. Applicant's Organizational and Financial Structure

5. Applicant is organized pursuant to the Trustees of Schools provisions² found in the Illinois School Code, 105 **ILCS** 5/1-1 *et seq.* Tr. p. 17; Administrative Notice.
6. Section 5/5-2 of the Trustees of Schools portion of the School Code provides that:

The school business of all school townships having school trustees shall be transacted by three trustees, to be elected by the qualified voters of the township,³ as hereinafter provided. The trustees shall be body politic and corporate, by the name of "trustees of schools of township No., range No.," according to the number, or in case of school townships created from two or more congressional townships, such name shall be "trustees of Township county, Illinois." Such corporation shall have perpetual existence, with power to sue and be sued, and to plead and be impleaded, in all courts and places where judicial proceedings are had.

2. Those provisions are found in 105 **ILCS** 5/5-1 through and including 105 **ILCS** 5/5-37.

3. The provisions governing voter eligibility and election of trustees are found respectively in 105 **ILCS** 5/5-2.1 and 105 **ILCS** 5/5-4.

105 **ILCS 5/5-2**. Administrative Notice.

7. Applicant's primary responsibility is to maintain legal title to all school district properties. Its other statutorily-conferred corporate powers include authority to:
(1) receive any grant, gift, donation or legacy made for the use of any school or library or for any other school purpose within the trustee's jurisdiction; and (2) effectuate the sale of any property deemed unsuitable for school purposes. 105 **ILCS 5/5-21, 5/5-22.**⁴ Administrative Notice; Tr. pp. 17-18, 20.
8. Applicant exercised these powers throughout the 1993 assessment year. In 1995, however, applicant was replaced by a seven-member Board of Education that held (and continues to hold) legal title to all school district properties (including the subject parcel) during subsequent tax years. Tr. pp. 18, 20-21.
9. Applicant held a governmental exemption from Illinois Use and related sales taxes throughout the 1993 assessment year. Applicant Ex. No. 10.
10. Applicant's fiscal year begins July 1 of each calendar year and ends the ensuing June 30 thereof. Its sources of operational and maintenance revenue for the fiscal year ending June 30, 1993 were as follows:

4. For a more complete description of the trustee's statutory powers, *see*, 105 **ILCS 5/5-23** through 5/5-28.

SOURCE	AMOUNT	% OF TOTAL⁵
Local Sources		
Property Taxes		
General Levies	\$3,020,898.00	74%
Fire Prevention & Safety Levies	\$ 285,166.00	7%
Corporate Personal Property Replacement Tax	\$ 50,000.00	1%
Earnings on Investments	\$ 23,055.00	<1%
Rentals	\$ 578,618.00 ⁶	14%
Other Local Sources	\$ 52,957.00	1%
Sale of Fixed Assets	\$ 38,654.00	<1%
Total Local Sources	\$4,049,348.00	99%
State Source - Restricted Grants-in-Aid	0	N/A
Federal source - Other	\$ 24,697.00	<1%
TOTAL OPERATIONAL AND MAINTENANCE REVENUES	\$4,074,045.00	

Applicant Ex. Nos. 6, 7.

11. Applicant's operational and maintenance expenses for the same period were as follows:

SOURCE	AMOUNT	% OF TOTAL
Supporting Services		
Business		
Facilities Acquisition and Construction Services		
Purchased Services	\$ 111,651.00	2%
Supplies and Materials	0	0
Capital Outlay	\$1,644,890.00	32%
Total	\$1,756,541.00	34%

5. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. Thus, $\$3,020,898.00 / \$4,074,045.00 = 0.7415$ (rounded four places past the decimal) or 74%.

6. This amount includes rental income derived from leases on portions of the subject property, *see*, Findings of Fact 48 through 60, *infra* at pp. 17 - 20.

SOURCE (CONT'D)	AMOUNT	% OF TOTAL
Operation and Maintenance of Plant Services:		
Salaries	\$1,800,460.00	35%
Employee Benefits	\$ 199,438.00	4%
Purchased Services	\$ 263,774.00	5%
Supplies and Materials	\$ 903,293.00	18%
Capital Outlay	\$ 209,514.00	4%
Other Objects	\$ 7,435.00	<1%
Total	\$3,383,914.00	66%
TOTAL OPERATIONAL AND MAINTENANCE EXPENSES	\$5,140,455.00	

Id.

12. Applicant's sources of operational and maintenance revenue for the fiscal year ending June 30, 1994 were as follows:

SOURCE	AMOUNT	% OF TOTAL
Local Sources		
Property Taxes		
General Levies	\$3,380,987.00	87%
Fire Prevention & Safety Levies	0	
Corporate Personal Property Replacement Tax	\$ 50,000.00	1%
Earnings on Investments	\$ 28,248.00	<1%
Rentals	\$ 351,076.00	9%
Refund of Prior Years' Disbursements/ Expenditures	\$ 43,118.00	1%
Other	\$ 10,996.00	<1%
Total Local Sources	\$3,864,425.00	
Federal source - Other	0	
TOTAL OPERATIONAL AND MAINTENANCE REVENUES	\$3,864,425.00	

Applicant Ex. No. 7.

13. Applicant's operational and maintenance expenses for the same period were as follows:

SOURCE	AMOUNT	% OF TOTAL
Supporting Services		
Business		
Facilities Acquisition and Construction Services		
Purchased Services	\$ 50,730.00	1%
Supplies and Materials	\$ 3,354.00	<1%
Capital Outlay	\$ 340,289.00	9%
Total	\$394,373.00	10%
Operation and Maintenance of Plant Services:		
Salaries	\$1,826,495.00	46%
Employee Benefits	\$ 228,930.00	6%
Purchased Services	\$ 281,038.00	7%
Supplies and Materials	\$1,003,747.00	25%
Capital Outlay	\$ 96,963.00	2%
Other Objects	\$ 45,958.00	1%
Total	\$3,483,131.00	88%
Payments for Special Educational Programs		
Other Objects	\$ 99,315.00	2%
TOTAL OPERATIONAL AND MAINTENANCE EXPENSES	\$3,976,819.00	

Id.

C. The System's Organizational and Financial Structure

14. The System is one of several multitype library⁷ systems established pursuant to Section 10/4⁸ of the Illinois State Library System Act, 75 ILCS 10/1 *et seq.* Its

7. Section 10/2 of the Illinois State Library System Act defines "multitype library" as one "in which (1) 10 or more public libraries and in addition other types of libraries, or (2) a single public library and in addition other types of libraries serving a single city of over \$500,000 population, enter into an agreement to provide any and all library services on a cooperative basis." 75 ILCS 10/2.

membership consists of numerous public, academic and school libraries located within a geographic area that covers approximately 950 square-miles of northwest Illinois. Tr. pp. 68-69.

15. Constituent members of the System include: (1) 22 academic libraries, including those at Barat College, the College of Lake County, Lake Forest College, National-Louis University, Northwestern University and Oakton Community College; (2) 48 Public Libraries, including the Arlington Heights Memorial Library, the Glenview Public Library, the Morton Grove Public Library and the Highland Park Public Library; (3) 39 school libraries located in various school districts within Cook County, including the one overseen by applicant; (4) 17 libraries located at private schools in Cook County, such as the Arie Crown Hebrew Day School, the Regina Dominican High School and the Willows Academy; (5) libraries located in public schools within Kane County School Districts 300 and U46; (6) libraries located at Elgin Academy and St. Edward High School, two private schools located in Kane County; (7) 41 libraries located at public schools within in Lake County, including Districts 3, 24, 50, 56, 75, and 220; (8) 5 libraries located at private schools within Lake County, including Lake Forest Academy, St. Matthew Lutheran School and Woodlands Academy of the Sacred Heart; (9) 3 libraries located at schools within McHenry School Districts 47, 155 and 156; and (10) 106 special libraries, including ones located at the C.J.

8. Section 10/4 establishes an application process and other procedural requirements for converting cooperative public library systems or public library systems into multitype library systems. For details about these procedures, *see*, 75 ILCS 10/4.

Jung Institute of Chicago, the Community Federation for Jewish Education, the Chicago Horticultural Society, the Lake County Museum, the Naval Hospital, the Veteran's Affairs Medical Center and the Walgreen Company. Applicant Ex. No. 11;⁹ Tr. pp. 68-69, 71.

16. The System's enabling statute provides that its daily business affairs shall be governed by a Board of Directors, which is vested with certain powers. These powers include: (1) developing and amending they bylaws and the plan of service that must be approved by the State Librarian;¹⁰ (2) having exclusive control over the expenditure of all moneys and funds held in the name of the System; (3) to make and adopt such policies, rules, and regulations for the efficient government and operation of the system; (4) to purchase or lease ground and to construct, purchase or lease, and occupy an appropriate building or buildings for the use of the library system and (5) to be a body politic and corporate, to contract and to hold title to property in the name of the System and in that name to sue and be sued and to expend funds for this purpose. 75 ILCS 10/5. Administrative Notice.

-
9. This exhibit contains an exhaustive listing of the System's members.

10. Section 320/2 of the State Library Act, (15 ILCS 320/1) provides that the Secretary of State is *ex officio* Librarian of the State Library and shall have direction and control thereof. This statute further provides, *inter alia*, that: (1) the Secretary of State shall appoint a Director of the State Library who shall act as administrator of the State Library's daily business affairs (*Id.*); (2) a State Library Advisory Committee shall make recommendations concerning the policies and management of the Library (15 ILCS 320/5, 320/6); and (3) the State Library shall, *inter alia*: (a) maintain and provide research library services of all State agencies; (b) administer the Illinois Library System Act, 75 ILCS 10/1 *et seq*; (c) function as a research and reference center pursuant to the Illinois Library System Act and (d) promote and develop cooperative library network operating regionally or statewide for providing effective coordination of the library resources of public, academic, school, and special libraries, and

17. The System's daily operations center around providing services to member libraries. These services include negotiating discounts, sponsoring continuing education programs and operating a delivery service. Tr. p. 69.
18. The System is exempt from Illinois Use and related sales taxes pursuant to a governmental exemption that the Department issued to the Illinois State Library and its member institutions, of which applicant is one. Applicant Ex. Nos. 13, 13(a).
19. The System operates on a fiscal year that begins July 1 of each calendar year and ends the ensuing June 30 thereof. Nearly all of its revenues (in excess of 90%) come from State grants. Most of its expenditures are devoted to employee compensation (salaries and benefits), contractual services, procurement of supplies and other operational endeavors.¹¹
20. The System's headquarters, located at 200 West Dundee Road, Wheeling, IL 60090 and identified by Cook County Parcel Index Number 03-02-316-031,¹² is exempt from real estate taxation. The Department granted this exemption in Docket Number 73-16-0218.¹³ Tr. p. 68; Applicant Ex. Nos. 14, 15; Administrative Notice.

promote and develop information centers for improved supplemental library services for special library clientele served by each type of library or center. (15 **ILCS** 320/7).

11. For detailed breakdowns of the System's income and expenses, *see*, financial statements included in Applicant Ex. Nos. 12, 12A.

12. This property is immediately adjacent to the subject parcel. Dept. Group Ex. No. 1, Doc C; Applicant Ex. No. 2.

13. The Department's basis for granting this exemption is somewhat unclear because most of the pertinent records are presently unavailable. However, the Certificate of Payment of General Taxes (Applicant Ex. No. 15) clearly establishes that this property was in fact exempt throughout the 1993 assessment year.

D. The Institute's Organizational and Financial Structure

21. The Institute was incorporated under the General Not-For-Profit Act of Illinois on April 30, 1989. Its corporate purposes are, per its by-laws, to establish and operate an institution of higher education devoted to applications of professional psychology. Applicant Ex. Nos. 16, 17.
22. The Institute obtained an exemption from federal income tax, pursuant to Section 501(c)(3) of the Internal Revenue Code, some time in 1980. This exemption remained in effect throughout the 1993 assessment year. Applicant Ex. No. 17; Tr. pp. 90-92.
23. The Department issued the Institute an exemption from Use and related Illinois sales taxes on January 18, 1991. This exemption, which was based on the Department's finding that the Institute was "organized and operated exclusively for educational purposes," was in full force and effect throughout 1993. Applicant Ex. No. 23; Tr. p. 104.
24. The Institute has been approved to operate as a post secondary educational institution in the State of Illinois since December 29, 1978. This approval, granted by the State Board of Education, remained in full force and effect throughout the 1993 assessment year. Applicant Ex. No. 20; Tr. pp. 96.
25. The Institute received accreditation from the North Central Association of Colleges and Schools Commission on Institutions of Higher Education in 1983. Its accreditation remained in effect throughout the 1993 assessment year and enabled the Institute to confer two types of graduate degrees, the Master of Arts in

Psychology and the Doctor of Psychology (Psy.D.) in Clinical Psychology, during that time. Applicant Ex. No. 19; Tr. pp. 94-96.

26. The Institute is (and during 1993 was) also approved by the American Psychological Association, a national organization that establishes curricula for educational institutions (such as the Institute) that focus on practitioner (as opposed to research) oriented work in psychology. Tr. pp. 94, 112.
27. The Institute is (and during 1993 was) further recognized by the National Register for Health Service Providers in Psychology. *Id.*
28. Those seeking admission to the Institute's Masters or Doctoral degree programs must: (1) have earned a baccalaureate degree from an accredited institution with a grade point average of 3.25 or better¹⁴ on a 4.0 scale during the last 60 hours of undergraduate study; (2) take the Graduate Record Exam and provide evidence of their scores thereon; (3) complete and submit an application form; (4) present official transcripts and three letters of recommendation; and (5) write and submit a personal essay that provides detailed answers about the potential student's personal life, educational experiences, professional interests, etc. Applicant Ex. No. 22.
29. The Institute has an admissions committee that reviews and evaluates all submissions from potential students. Those that pass the admissions committee's initial review are invited for a personal interview, after which an offer of admission may be extended. *Id.*

14. Students applying for the masters program must also have the equivalent of twelve semester hours in psychology with a grade point average of 3.25 or better. Those

30. The Institute's faculty that consists of clinicians and educators, all of whom have experience in clinical (practice-oriented) psychology and hold doctoral degrees in psychology or related fields. They teach a curriculum that is designed to train persons to apply scientific knowledge and professional skills in the prevention and amelioration of human problems. Applicant Ex. No. 22; Tr. pp. 99-100, 108, 114.
31. The Institute's curriculum, both Masters and Doctoral levels, parallels that taught in graduate programs at the University of Illinois, Champaign Urbana and Southern Illinois University at Carbondale.¹⁵ Tr. p. 97.
32. The Masters level curriculum is, in essence, a sequence of foundational courses that prepare students for the doctoral program. Its curriculum is divided consists of 55 credit hours that are taken over a two year course of study. *Id*; Tr. p. 109.
33. The Masters level curriculum includes, *inter alia*, courses in Human Development, Research Design and Methods, Psychological Assessment, Psychological Intervention, Biological Bases of Human Behavior,

applying for the Psy.D. Program must also have the equivalent of eighteen semester hours in psychology with a grade point average of 3.25 or better. Applicant Ex. No. 22.

15. I base this finding on the testimony of Richard Cox, whose qualifications include, *inter alia*, a bachelor's degree, two masters degrees, a PhD and post-doctoral studies in Medicine, Theology and Gerontology. Dr. Cox is also a licensed psychologist in Illinois and Missouri and holds a Diploma in Clinical Psychology from the American Board of Clinical Psychology in addition to Diplomas from the American Board of Examiners in Psychological Hypnosis and the American Association of Pastoral Counselors. Applicant Ex. No. 22.

Based on these qualifications, and by virtue of his experience as an administrator with the Institute, (*see*, Tr. pp. 88-90), I find that Dr. Cox is a duly qualified expert in the fields of clinical psychology and graduate training therein. *See*, Taylor v. The Carborundum Co., 107 Ill. App.2d 12 (1st Dist. 1969); People v. Johnson, 145 Ill. App.3d 626 (1st Dist. 1986). Therefore, I base Finding of Fact 31 on his expert opinion testimony at Tr. p. 97.

Psychopathology, Clinical Skills Seminars, a series of field practica and a masters project. Applicant Ex. No 22.

34. The Doctoral curriculum consists of 142 credit hours that are taken over a four-year course of study. This curriculum initially consists of many of the same courses that are required for the Masters degree. However, at the end of the second year, all Doctoral students must take and pass a comprehensive qualifying examination. Successful completion of this examination, which covers coursework material as well as skills learned in the various field practica, enables the student to advance to the doctoral candidacy stage. *Id.*
35. The third and fourth years of the doctoral curriculum consists of more class work, including, *inter alia*, a research seminar, an advanced clinical skills seminar, three field practica and preparation of a clinical dissertation proposal. During the fourth year, doctoral candidates are also required to devote no less than 200 hours to a clinical internship and participate in an internship seminar. They are also required to complete and submit their doctoral dissertations, which must represent a significant scholarly contribution to the writings in the field of clinical psychology, and present an oral defense thereof.¹⁶ *Id.*
36. Students in both the Doctoral and Masters programs must maintain a 3.0 grade point average in order to graduate. Tr. p. 114.

16 . For further details about both the doctoral and the masters curricula, (including specific course descriptions) *see*, Applicant Ex. No. 22.

37. Those who graduate from the Doctoral program are qualified to sit for the State-mandated licensure examination in the field of clinical psychology. Tr. pp. 107-108, 112-114.¹⁷
38. During the 1993 assessment year, the Institute's principal sources of revenue were tuition and student fees. Its other sources of revenue included, *inter alia*, clinic and program service fees, federal grants, private gifts, bookstore sales and interest income.¹⁸ Applicant Ex. Nos. 24, 24A.
39. Salaries, payroll taxes and employee benefits were the Institute's largest expense throughout the 1993 tax year. Its other expenses included, *inter alia*, outside professional services, fellowships and assistantships, rental of facilities,¹⁹ building maintenance, lectures and seminars, cost of books sold, and insurance. *Id.*

E. Location and Description of the Subject Property

40. The subject property is located at 200 Glendale Avenue, Wheeling, IL 60090. It is situated on a lot measuring 5.33 acres and improved with a two-story building that occupies a total of 30,952 square feet. Dept. Group Ex. No. 1, Document A; Applicant Ex. Nos. 2, 3; Tr. pp. 27-28.
41. Each floor occupies approximately 15,476 square feet. The first floor contains approximately six classrooms, office space, a lounge and restrooms. The second

17. The examination requirement is contained in Section 15/10 of The Clinical Psychologist Licensing Act, 225 ILCS 15/1 *et seq.* Administrative Notice.

18. For further information about the specific amounts attributable to each source of revenue, and other details about the Institute's financial structure during the 1993 assessment year, *see*, Applicant Ex. Nos. 24, 24A.

floor contains additional classrooms and office space as well as a large learning center. Applicant Ex. No. 3; Tr. pp. 33-35.

42. The subject property is also improved with a paved parking lot that occupies a total of 82,738 square feet. Applicant Ex. Ex. Nos. 2, 3; Tr. pp. 28-31.

F. Ownership and Use Issues

43. Applicant acquired ownership of the subject parcel via a quit claim deed dated 19, 1970. Applicant Ex. No. 1.
44. Applicant acquired the subject property in order to build a school, which it did in 1971. It subsequently operated the Hawthorne School on the subject property from 1971 through 1980. Tr. p. 36.
45. Applicant closed the Hawthorne School in 1980. It used the subject property for storage in the ensuing years. Tr. pp. 36-37.
46. From 1989 to 1993, applicant conducted teacher training and staff development programs on the first floor. Applicant also used this space as a discovery center during that time. Tr. pp. 37-38.
47. Students from the nine elementary schools in applicant's district received direct educational instruction, mostly in the area of science, at the discovery center. These students attended the discovery center on a rotating basis. However, at least one rotation of students attended the discovery center during each school day. *Id.*

19. Some of this expense was attributable to an arrangement wherein the Institute leased a portion of the subject property from the applicant. For details about this arrangement, see Findings of Fact 53 through 60, *infra* at pp. 18-20.

48. The second floor was vacant throughout 1989. However, on September 1, 1990, applicant entered into a lease arrangement with the Institute. This arrangement was in effect throughout the 1993 assessment year and provided, *inter alia*, that: (1) applicant was to lease a portion of the subject property to the Institute during a term beginning September 1, 1990 and ending August 31, 1993; (2) the demised portion was specifically identified as the second floor of the building located on the subject property; (3) the Institute was to restrict its use of the demised portion to purposes connected with carrying on its program operations; (4) the Institute was to pay monthly rental of \$2,916.67 throughout the term of the leasehold; (5) the Institute was also to pay any real estate taxes levied on the demised premises; and (6) payment of all utility (gas, electric and water) bills was to be divided equally between the lessor and lessee, so that the Institute and the applicant each paid 50% of each bill. Applicant Ex. No. 6; Tr. pp. 36, 43.
49. The applicant and the Institute executed an amendment of this lease in December of 1990. Said amendment: (1) extended the term of the lease by one full year, so that it expired on August 31, 1994; and (2) increased the amount of rent payable between September 1, 1993 and August 1, 1994 to \$3,062.50 per month. Applicant Ex. No. 6A.
50. Applicant determined the amount of the Institute's rental payments by determining the actual annual costs associated with operating the building and approximating such costs over the term of the lease. Applicant Ex. Nos. 8, 8A; Tr. pp. 44-45; 53-58.

51. Applicant deposited all of the Institute's rental payments into a fund used to defray expenses arising from operating and maintaining school district properties. Despite these payments, applicant sustained fund balance deficiencies in its 1993 and 1994 fiscal years.²⁰ Applicant Ex. No. 7A; Tr. pp. 45-46, 50-54.
52. Both the Institute and the applicant complied with all terms of the amended lease throughout the 1993 assessment year. Such compliance included the Institute honoring the use restriction prohibiting it from using the demised premises for any purpose other than administering its accredited degree programs in clinical psychology and providing graduate-level instruction therein. Tr. pp. 44, 101-104.
53. On April 30, 1992, applicant entered into a lease whereby it demised certain parking spaces to the System. The parties entered into this lease in order to accommodate the System's occasional need for overflow parking. Applicant Ex. No. 9A; Tr. p. 61.
54. The System needed overflow parking when it held meetings, continuing education programs, training sessions or other functions at its headquarters during evening hours. Tr. pp. 61, 84-86.
55. The lease did not specify which 20 parking spaces the System was to use. Each individual parking space occupied 114 square feet (or less than 1%)²¹ of the

20. The fund balance deficiency for fiscal 1993 was \$3,178,856.00; the deficiency for fiscal 1994 was \$1,462,178.00. Applicant Ex. No. 7.

21. $114/82,738 = 0.001377843312625$ or less than 1%.

82,738 square feet contained in applicant's parking lot. These spaces also combined to occupy approximately 3%²² of that same area. Tr. pp. 61-63.

56. All of the leased parking spaces were located in southeast portion of the subject property's parking lot. This portion of the parking lot is located due north of the System's headquarters. It abuts a footbridge that leads to this property. Dept. Group Ex. No. 1, Doc. C; Applicant Ex. No. 2; Tr. pp. 82-83.
57. Applicant's lease with the System provided, *inter alia*, that: (1) the term of the lease ran from May 1, 1992 until April 30, 1993; (2) the demised premises would consist of twenty parking spaces, which the System was to lease from applicant; (3) the System was allowed to utilize such spaces a maximum of four times per month, but only between the hours of 7:00 a.m. and 5:00 p.m; (4) the System was to use the demised parking spaces only for the above-specified purposes, and further, prohibited the System from using said parking spaces for any profit-making enterprise; (5) the System was to pay monthly rental of \$63.21 for the twenty parking spaces; (6) said rental covered the applicant's expense in maintaining the demised parking spaces, but did not exceed same and (7) the System was to pay all real estate taxes levied against the demised parking spaces, provided that such taxes were attributable to the System's using such parking spaces in a manner other than that specified in the lease. Applicant Ex. No. 9A; Tr. p. 58
58. Applicant subsequently entered into another lease with the System on April 30, 1993. The provisions of this lease were virtually identical to the ones set forth

22. $114 \times 20 = 2,280$; $2,280/82,738 = 0.02755686625251$ or 3%.

above except that: (1) the term of the lease ran from May 1, 1993 through April 30, 1994; and (2) the System's rent was increased to \$66.37 per month. Applicant Ex. No. 9; Tr. pp. 59-60.

59. Applicant arrived System's rental payment amount via a cost-based approach that was similar to the method it employed for computing the Institute's rental payment. Tr. pp. 59-61.

60. Applicant used the rental payments it received from the System to defray maintenance costs associated with the parking lot, including paving and resurfacing. *Id.*

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has submitted evidence and argument sufficient to warrant exempting the subject parcel from 1993 real estate taxes. Accordingly, under the reasoning given below, the Department's determinations that said property does not satisfy the statutory requirements set forth in 35 ILCS 205/19.18 should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant

exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, 35 ILCS 205/1 *et seq.* The provisions of that statute which govern the present case are found in 35 ILCS 205/19.18, wherein "all property of public school districts or public community college districts not leased by such school or community college districts or otherwise used with a view to a profit" is specifically exempted from real estate taxation.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968), (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

This case presents a relatively unique fact pattern, one in which the applicant: (1) owned the entire subject property throughout the entire 1993 tax year; (2) used the entire first floor for school district purposes (to wit, teacher training and the discovery center) throughout the tax year in question; (3) leased the entire second floor to the Institute, which used this portion of the subject property to administer its accredited degree programs in clinical psychology and provide graduate level instruction therein, during that same tax year; and (4) leased 20 parking spaces (or approximately 3% of the total square footage of the parking lot) to the System, which used these spaces for overflow parking no more than 4 times per month during 1993.

This fact pattern may be unusual and complex. However, it is not one of first impression in this state, for in Children's Development Center v. Olson, 52 Ill.2d 332 (1972) (hereinafter "Olson"), the Illinois Supreme Court confronted a situation wherein a tax-exempt religious organization, the School Sisters of St. Francis, leased a portion of a former convent to the appellant, a tax-exempt "institution of public charity." *Id.*

The Court held in favor of exempting appellant's leasehold interest. In doing so, the Court reasoned that:

It is not questioned that the activities conducted by the [appellant] Center are charitable and that if the property were owned by the Center and these activities conducted thereon [sic], it would be tax exempt. Also if Sisters were to conduct a similar operation instead of Center, it appears that the property would be tax exempt.

Olson at 334-335.

The court then distinguished cases wherein exemptions were denied because the leased properties were primarily used for the non-exempt purposes of producing income and therefore generating a profit for the owner. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924); Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); City

of Mattoon v. Graham, 386 Ill. 180 (1944). It proceeded to argue that courts in cases such as People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill.2d 363 (1944) and People ex. rel. Hesterman v. North Central College, 336 Ill. 263 (1929) allowed exemptions because "the primary use of the leased property, while yielding incidental income, was to serve a function connected with the tax-exempt purpose of the institution." Olson, *supra* at 335-336. Thus:

... We need go no further than the drawing of this distinction for the decision of this case. It is unnecessary through accounting procedures to ascertain whether Sisters actually made a profit from the leasing. That is not the test. This court has often held that it is the primary use of the property and not the ownership that determines its taxable status. [citations omitted].

We likewise consider that it is the primary use to which the property is devoted *after the leasing* which determines whether the tax-exempt status continues. If the primary use is for the production of income, that is, "with a view to profit," the tax exempt status is destroyed. Conversely, if the primary use is not for the production of income but to serve a tax-exempt purpose the tax exempt status of the property continues though the use may involve the incidental production of income. Following the leasing, the primary use to which the property was devoted was serving the tax-exempt charitable purpose of the Center. This did not destroy the tax-exempt status of the leased property although the letting produced a return to Sisters.

Olson, *supra* at 336. [emphasis added].

In order to apply these principles to the present case, one must ascertain whether: (1) the applicant-lessor *and both* of the lessees qualify as tax-exempt entities; and (2) the post-leasing uses furthered one or more tax-exempt purposes. For the following reasons, I conclude that both inquiries should be answered in the affirmative.

The applicant itself is a creature of statute, having been created as the governing body of a public school district pursuant to the Trustees of Schools provisions found in the Illinois School Code, 105 **ILCS** 5/1-1 *et seq.* Its enabling statute provides that applicant is a "body

politic and corporate" which, *inter alia*, is vested with authority to maintain legal title to all school district properties and effectuate the sale of any such properties deemed unsuitable for school purposes. *See*, 105 ILCS 5/5-2, 5-21, 5-22.

These considerations, coupled with applicant's *governmental* exemption from Illinois Use and related sales taxes (Applicant Ex. No. 10), lead me to conclude that applicant is a tax-exempt entity. Said considerations also lead me to conclude that applicant's property is subject to exemption under Section 205/19.18, provided that it satisfies the appropriate statutory criteria. Therefore, any remaining analysis must focus on ascertaining the precise nature of such criteria and applicant's conformity therewith.

Section 205/19.18 provides (in pertinent part) for exemption of "*all property of public school districts ... not leased by such school districts ... or otherwise used with a view to a profit.*" 35 ILCS 205/19.18 (emphasis added). This language is fairly clear but contains three distinctive features: first, the adjective "all" implies that the exemption is not limited to certain types of school district property, such as school or administration buildings; second, the preposition "of" connotes an ownership requirement (*see*, Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968)); and third, the only use restriction on this exemption is the prohibition on leasing or other use for profit as explained in Olson.

The quit claim deed (Applicant Ex. No. 1) establishes that applicant owned the subject property throughout the 1993 assessment year. In addition, the testimony of applicant's assistant superintendent of finance and operations, Daniel Cash, establishes that the first floor was not leased, but rather used for school district purposes (teacher training, staff development programs and the discovery center), during that tax year. *See*, Tr. pp. 37-38. Therefore, at minimum, the

Department should have exempted this portion of the subject property and determined the exempt status of the two leaseholds according to the criteria set forth in Olson.

Applying these criteria to the second floor leasehold requires determining whether the Institute qualifies as a "school" within the meaning of Illinois law. The legal definition of that term, first articulated in People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132 (1911), (hereinafter "McCullough"), is as follows:

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance [sic] of the word.

McCullough at 137.

Current Illinois case law also holds that a private school, such as the Institute, cannot obtain an exemption from real estate taxes unless it establishes two propositions by clear and convincing evidence: first, that it offers a course of study which fits into the general scheme of education established by the State; and second, that it substantially lessens the tax burdens by providing educational training that would otherwise have to be furnished by the State. Illinois College of Optometry v. Lorenz, 21 Ill. 219 (1961), (hereinafter "ICO").²³

In ICO, the court began analyzing whether applicant's optometry school satisfied the above criteria by noting that "[t]he Illinois Optometric Practice Act"²⁴ has expressly declared that

23. See also, Coyne, *supra*; Brenza, *supra*; Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986); American College of Chest Physicians v. Department of Revenue, 202 Ill. App.3d 59 (1st Dist. 1990); Yale Club of Chicago v. Department of Revenue, 214 Ill. App.3d 468 (1st Dist. 1991); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565 (1st Dist. 1991).

24. At the time ICO was decided, those provisions appeared at Ill. Rev. Stat. 1959, chap. 91, par. 105.2 *et. seq.* The current version is found in 225 **ILCS** 80/1 *et seq.*

the practice of optometry in this State affects the public health, safety and welfare ...[.]” ICO, *supra* at 219. The court further observed that the General Assembly intended “to elevate the practice of optometry to that of a profession or skilled occupation similar to the practice of medicine, surgery or dentistry.” *Id.*

The General Assembly has enacted an extensive and pervasive scheme of legislation which manifests the State's interest in regulating and licensing those who engage in the practice of clinical psychology. *See*, The Clinical Psychologist Licensing Act, 225 **ILCS** 15/1 *et seq.* (hereinafter “CPLA”) and implementing regulations contained in 68 Ill. Admin. Code, ch. VII, § 1400.10 *et seq.*

Section 15/1 of the CPLA contains the following declaration of public policy:

The practice of clinical psychology in Illinois is hereby declared to affect the public health, safety and welfare, and be subject to regulations in the public interest to protect the public from persons who are unauthorized or unqualified to represent themselves as clinical psychologists or as being able to render clinical psychological services as herein defined, and from unprofessional conduct by persons licensed to practice clinical psychology.

225 **ILCS** 15/1.²⁵

The CPLA also provides that no person may practice clinical psychology without first obtaining a valid license to engage in such practice from the Department of Professional Regulation (hereinafter “DPR”), and further, provides that DPR shall not issue such a license unless, *inter alia*, the person applying: (1) is a graduate of a doctoral program from a college, university or school accredited by the regional accrediting body which is recognized by the Council on Postsecondary [sic] Accreditation and is in the jurisdiction in which it is located for purposes of granting the doctoral degree and either: (a) is a graduate of a doctoral program in

25. *See also*, 225 **ILCS** 15/28 (Express declaration that it is public policy of this State that any powers or functions granted to the State in the CPLA are exclusive State powers or

clinical ... psychology either accredited by the American Psychological Association or approved by the National Register of Health Service Providers in Psychology, and has completed 2 years of supervised experience in clinical ... psychology at least one of which is an internship and of which is postdoctoral; or (b) holds a degree from a recognized college, university or school which DPR, through rules, establishes as being equivalent to a clinical ... program and has actually attended and completed other statutorily-specified coursework and internship requirements; and (2) has passed an examination authorized by DPR to determine his/her fitness to receive a license. 225 **ILCS** 15/3, 15/10(3)(a), 15/10(3)(b), 15/10(4).

The Institute's compliance with the above criteria is established by that facts that, during 1993, it was: (1) approved by the State Board of Education to operate as a post-secondary educational institution in the State of Illinois (Applicant Ex. No. 20); (2) accredited to confer Masters and Psy.D. degrees by the North Central Association of Colleges and Schools Commission on Institutions of Higher Education (Applicant Ex. No. 19); (3) approved by the American Psychological Association, a national organizations that sets curricula for schools such as the Institute (Tr. pp. 94, 112); and (4) recognized by the National Register for Health Service Providers in Psychology (*Id*).

Moreover, Dr. Cox's expert opinion establishes that Institute's masters and doctoral curricula are equally as comprehensive and exacting as those taught at tax-supported institutions of higher education, such as the University of Illinois and Southern Illinois University. *Cf. ICQ, supra* at 223. His expertise further establishes that graduates of the Institute's doctoral program are duly qualified for the statutorily-mandated licensure examination. Based on all the aforestated considerations, I conclude that the Institute is a tax-exempt entity that would have

functions that are not to be exercised concurrently, either directly or indirectly, by any unit of

qualified for exemption from 1993 property taxes if: (1) it had owned any real estate in the State of Illinois during that time and (2) actually and exclusively used any property so owned for exempt purposes.

The Institute did not own any real estate in Illinois during 1993. It did, however, use its leasehold on the second floor exclusively for purposes related to administering its graduate-level curriculum in clinical psychology and providing appropriate instruction therein. It also made rental payments that were calculated on a cost-based approach which ensured that applicant did not profit therefrom. For all these reasons, I conclude that, pursuant to Olson, *supra*, the second floor would have been tax exempt if the Institute owned it during 1993. Therefore, that part of the Department's determination that denied this portion of the subject property exemption from 1993 real estate taxes should be reversed.

A similar rationale applies to the System. Its rental payments were, like those of the Institute, based the actual costs that applicant incurred in operating and maintaining the parking lot. As such, I can not conclude that applicant received such rental payments with a view to profit. Furthermore, the record clearly establishes that: (1) the System is a creature of statute that provides services to many tax-exempt libraries; (2) the System's headquarters, which is immediately adjacent to the subject property, was tax-exempt throughout the entire 1993 assessment year; and (2) the System held a *governmental* exemption from Illinois Use and related taxes during that time.

Taken together, these considerations prove that the System itself was tax-exempt throughout the tax year in question. Thus, one could plausibly conclude that the System's use of the demised parking spaces was "reasonably necessary" to effectuate its own exempt purposes.

local government, including home rule units, except as otherwise provided in the CPLA).

See Evangelical Hospitals Corp. v. Department of Revenue, 233 Ill. App.3d 225 (2nd Dist. 1991). Even if it were not, the evidence establishes that the System's use of the such spaces was limited to occasional (no more than four times per month) overflow parking in an area that encompassed only 3% of the total square footage of the entire parking lot. Accordingly, it is equally plausible to conclude that the System's uses were incidental to other exempt uses, such as those connected with the Institute, the discovery center or applicant's teacher training programs. Olson, *supra*. Therefore, that portion of the Department's determination that denied exemption based on the System's leasehold should be reversed.

In summary, the entire subject property should qualify for exemption from 1993 real estate taxes because each of the three entities that used said property during 1993 was, itself, a tax-exempt entity that used the property for some specifically identifiable tax-exempt purpose. Under these circumstances, the holding in Olson, *supra*, mandates that the Department's determination to the contrary be reversed.

WHEREFORE, for all the preceding reasons, it is my recommendation that the entirety of real estate identified by Cook County Parcel Index Number 03-02-316-030 be exempt from 1993 real estate taxes.

Date

Alan I. Marcus
Administrative Law Judge